

## **INITIAL STATEMENT OF REASONS/NON-CONTROLLING SUMMARY**

### **Property Tax Rule 462.040 Change in Ownership - Joint Tenancies**

#### **Specific Purpose**

The purpose of the proposed rule amendments is to clarify existing statutory provisions governing creation of “original transferor” status by amending the regulatory language to eliminate the potential of obtaining “original transferor” status by transferring joint tenancy interests into trusts.

#### **Factual Basis**

Revenue and Taxation Code section 65 is the statutory authority that interprets and applies the elements of a change in ownership as set forth in section 60 to the creation, transfer and termination of joint tenancy interests. Subdivision (b) of section 65 provides, in relevant part, that the creation of a joint tenancy in which the transferors are among the transferees is excluded from change in ownership. In such a transfer, the transferors become “original transferors” and a subsequent transfer or termination of a joint tenancy interest does not result in a change in ownership if the interest vests entirely or in part in an original transferor. When the last original transferor’s interest terminates then there is a change in ownership of the entire property.

Effective November 13, 2003, Property Tax Rule 462.040, subdivision (b)(1) provides that joint tenants may become “original transferors” if they transfer their joint tenancy interest to their respective trusts for the benefit of the other joint tenant or joint tenants. For purposes of the rule, such conveyances are considered to be a transfer of the joint tenancy interests within the meaning of section 65, subdivision (b) discussed above. In other words, the rule recognizes that trustors transferring their joint tenancy interests into their respective trusts are “transferors among the joint tenants,” and thus, obtain “original transferor” status.

The California Assessors Association (CAA) states that unanticipated and unintended administrative problems have resulted from the creation of original transferor status by the transfer of joint tenancy interests into trusts. Significant problems include: (1) difficulty in determining whether the trust document substantiates the creation of original transferor status; (2) trust provisions could be amended after the joint tenancy interest transfer is recorded; and (3) difficulty in determining, on the death of a property owner, which document substantiates the transfer of the property to an original transferor. To prevent those who have relied on the current version of the rule from being adversely impacted by these amendments, the proposed rule amendments will be effective on a prospective basis only.

In the first sentence of subdivision (b)(1), the reference to transferring joint tenancy interests “including an interest in a trust” is deleted to reinforce the general rule

that transfers of joint tenancy interests into trusts will not obtain original transferor status. The third sentence of subdivision (b)(1) is amended to make specific that original transferor status is attained by transfer into trust only from the November 13, 2003 effective date of the previous rule amendment until the day immediately prior to the effective date of the proposed amendment.

Subdivision (b)(1), Example 4-1, second sentence, is amended by addition of the date “December 12, 2004,” a date after November 12, 2003 and before the effective date of the proposed rule amendments, to provide an example of a transfer into trust whereby the transferors obtain original transferor status by means of the transfer. A fourth sentence was added to Example 4-1 to clearly explain how the prospective application of the rule should be understood.

Subdivision (b)(1), Example 9, is amended to clarify that the step transaction doctrine may also apply to situations where original transferor status is not obtained by transfer into trust.

Subdivision (d), Example 14, is amended to clarify that the assessor’s consideration of evidence to rebut a deed presumption is not limited to situations where original transferor status is obtained by transfer into trust.